

Present were: Anderson (Chair); Brown (Acting Clerk); Batchelder and Jeton (Members); Boness (Associate Member).

The meeting opened at 7:04 p.m.

Petition No.: 3937

Premises affected: 1 Shaw Drive

Petitioner: Schwartz

Members: Anderson, Brown, Batchelder, Jeton, Boness

Attorney Mark Johnson, with offices at 12 Chestnut Street, represented the Schwarz's. He summarized the modifications & changes to the plans. He also informed the Board that they had met with the Massachusetts Historical Commission (MHC) two weeks ago. Andover Preservation Commission Chair Karen Herman also spoke with MHC today, but was unable to get an answer. The Town is eager to move the house. They are asking to continue the public hearing to the July 7, 2011 meeting in expectation of obtaining MHC's answer within 10 days and signing of the preservation restriction. Brown made a motion to continue the hearing to 7/7/11. Batchelder seconded the motion. Mary Carbone, of Cyr Circle, commented that July 1st is the date the Town wishes to move the house in order to hot top the parking area. Johnson suggested the Town might extend the deadline. Anderson suggested meeting in June, on or after June 19th. Brown made a motion to continue the public hearing until 6/22/11 at 7 p.m., location to be determined. Batchelder seconded the motion & the Board voted (5-0) to continue the hearing to 6/22/11 at 7 p.m.

Petition No.: 3938

Premises affected: 1350 & 1350R South Street

Petitioner: SunGen LLC

Members: Anderson, Brown, Batchelder, Jeton, Boness

Attorney Mark Johnson was present on behalf of the Petitioners requesting to continue the public hearing without opening to the July 7, 2011 meeting. He explained that the Tewksbury abutters hadn't been properly notified in the initial abutter notifications and that they will be properly notified for the July 7, 2011 meeting. Batchelder made a motion to continue the hearing without opening to the July 7, 2011 meeting. Brown seconded the motion & the Board voted unanimously to continue the hearing to 7/7/11.

Petition No.: 3936

Premises affected: 56 Porter Road

Petitioner: Quail

Members: Anderson, Brown, Batchelder, Jeton, Boness

Matthew & Tiffany Quail represented themselves in their request for a variance from 4.1.2 &/or a special permit under 3.3.5 to construct an addition that will not meet the minimum front yard depth requirement. The house is located in the SRB district on a corner lot (corner Timothy Dr. & Porter Rd.). Mrs. Quail submitted three letters of support from abutters. They have an existing single family dwelling with a single car garage. They want to add onto the rear/side portion along Timothy Drive to include a larger garage. Due to the angle of the house & lot lines, the proposed addition will be slightly closer to the front lot line than the existing house. The proposed front setback is 26.5' from Timothy Drive while the existing is 27.9'. Therefore, the non-conformity would be increased with the further encroachment into the minimum front yard depth. The Board inquired if the proposal could be setback further. The Quails agreed that it could be setback an additional 16". The house was built in 1962, prior to the construction of Timothy Drive (10/16/65). Brown noted that at that time the minimum front yard depth requirement was 40' and side was 15'. Anderson added that the construction of Timothy Drive rendered the house non-

conforming and therefore it is a lawful, pre-existing, non-conforming structure. Brown summarized the letters of support from Thomas Reynolds, direct abutter on Porter Rd., Donna Masariello, 4 Timothy Dr., and Eileen & Ken Doherty, 3 Timothy Dr. Brown informed the Board that he had driven by the property individually. The Board decided not to collectively view the property. Batchelder made a motion to close the public hearing. Jeton seconded the motion and the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. Jeton commented that this is a reasonable proposal on a lot rendered non-conforming by the construction of Timothy Drive. Anderson added that the proposal will not have an adverse effect & fits into the neighborhood. Brown suggested conditions of approval to include sliding the addition back so it's no closer to the street than the existing garage. Brown made a motion to approve a special permit with the condition that the addition be built no closer to Timothy Drive than the existing dwelling and that it is constructed in conformance with the plans submitted with the exception of the first condition regarding front setback. Batchelder seconded the motion. Anderson made a motion to deny the variance as moot/unnecessary. The Board voted unanimously (5-0) to grant the special permit subject to conditions and to deny the variance as moot. Jeton will write the decision.

Petition No.: 3932

Premises affected: 70 North Main Street

Petitioner: Jeffco

Members: Anderson, Brown, Batchelder, Jeton, Boness

No one was present regarding this continued hearing, the applicant, counsel or abutters. A request to continue to the 8-4/11 meeting with an extension until 9-6-11 was received today. Batchelder made a motion to continue the hearing to 7-7-11. Brown seconded the motion & the Board voted unanimously to continue the hearing to 7-7-11.

Anderson recused himself from the following hearings.

Petition No.: 3904 & 3923

Premises affected: 311 Lowell Street

Petitioner: New Cingular

Members: Brown, Batchelder, Boness, Jeton

A written request to continue the public hearing to the 7-7-11 meeting was received with an extension until 8-8-11. Jeton made a motion to continue the hearing until 7-7-11. Batchelder seconded the motion & the Board voted (4-0) to continue the hearing to 7-7-11.

General Business (Anderson, Brown, Batchelder, Jeton, Boness)

Alix Driscoll, Conservation Commission Member, spoke to the Board on behalf of the Conservation Commission to express their collective desire to collaborate and discuss projects that have joint filings with each board. It is suggested that a Conservation member attend ZBA meetings. She asked how Conservation could reach out to the ZBA. Chair Anderson explained the 'chicken-egg' situation, particularly with a filing that involves wetlands, the ZBA &/or a 40B application. Since neither board has the other's expertise, he suggested a joint meeting when a matter is pending in order to hear evidence simultaneously. He noted the legal issues regarding abutter notification emphasizing that the hearing must be on the agenda, legal notice, meeting posting, and abutter notice for each board. Anderson added that site visits could be joint too. Brown stated his opinion that the idea of joint hearings is for the more complex cases. Otherwise, Conservation Commission wants applications to file with other Town Boards prior to Conservation. Driscoll confirmed that this is a Conservation rule that requires an applicant to either have filed for a public hearing or have approvals from other Boards prior to filing with Conservation. Anderson argued that when wetlands are concerned, Conservation should be the first Board to hold its hearings. Brown suggested that the ZBA can create a

policy requiring any applicant requiring relief from multiple boards to file all Town Board applications prior to any public hearings be held. He also suggested that Conservation could comment/review any ZBA applications that involve Conservation. Anderson stated that 40B applications ask for the wetlands by law be waived, but he prefers the ZBA grant a waiver, including a set of conditions with reasons to protect the wetlands, written by the Conservation Commission. Anderson concluded that they would like Conservation input on minor projects involving wetlands too.

Outdoor Dining on Post Office Ave. – Informal Presentation

Chris Huntress, Landscape Architect, and David Samuels, Principal of Musgrove LLC, appeared before the ZBA to make an informal presentation. Anderson reminded everyone that the ZBA is not an advisory board and that it only takes evidence at public hearings. He cautioned all to be careful of what they may state during the informal presentation without the public being present.

Huntress informed the Board that they have already filed an application for a special permit. They have met with the Planning Division, Fire, Police & Town Clerk. The Zoning Administrative Secretary was also present at that meeting to advise them of the application process. They are working with the Town Clerk regarding liquor license issues (containment, police, safety). The three restaurants on Post Office Ave would like to place outdoor seating as soon as possible.

Anderson suggested that since summer is a busy time for all, the applicant may consider submitting at the public hearing an electronic draft decision to the Secretary including facts and grounds for approval so the Board may expedite the decision process. He cautioned that the draft decision must be neutral & factual; professional like a law clerk.

Brown asked if, with Post Office Ave being a private street having parking on both sides, it would be closed to vehicular traffic with the outdoor seating in use. Huntress admitted some parking spaces would be used for seating, but they would still be in compliance with parking regulations. Anderson informed Huntress & Samuels that the Zoning Bylaw was amended at this year's Town Meeting and that such changes may, or may not, affect this situation. He asked if there are any lease holds/parking rights on the street, and if so, how many and whether or not there are enough spaces left to accommodate it. Huntress stated that because it's a private street, the outdoor dining bylaw does not address it. Anderson requested that they audit the leases. Jeton added that the outdoor dining bylaw assumes that the tables/chairs will be on the sidewalk. She requested written documentation on public safety from Fire & Police.

Huntress informed the Board that they have submitted to the Design Review Board, although not required, and will be reviewed next Wednesday. Jeton asked if they're working with all abutting businesses. Huntress stated that they have spoken with some, but that the parking spaces that are impacted are held in lease by the tenants who want seating.

Jeton made a motion to adjourn the meeting. Batchelder seconded the motion & the Board voted (5-0) to adjourn the meeting at 8:08 p.m.